

VZCZCXRO3344
RR RUEHDBU
DE RUEHMO #1123/01 1201339
ZNY CCCCC ZZH
R 301339Z APR 09
FM AMEMBASSY MOSCOW
TO RUCNCIS/CIS COLLECTIVE
RUEHDX/MOSCOW POLITICAL COLLECTIVE
RUEHC/SECSTATE WASHDC 3118

C O N F I D E N T I A L SECTION 01 OF 03 MOSCOW 001123

SIPDIS

E.O. 12958: DECL: 04/29/2019
TAGS: [PHUM](#) [PREL](#) [KDEM](#) [KJUS](#) [RS](#)
SUBJECT: THE KHODORKOVSKIY SHOW, UP CLOSE

REF: A) MOSCOW 696 B) MOSCOW 624 C) MOSCOW 994

Classified By: Pol Minister Counselor Alice Wells for reason 1.4 (d)

¶1. (C) Summary: On April 28, we attended the Khodorkovskiy/Lebedev trial in Moscow's Khamovnikchesky Court, which began on March 31. Although on previous visits we had been restricted to a viewing room for journalists, on this occasion we gained entrance to the courtroom. The prisoners' approximately 30 vocal supporters elicited a calm response from court officers. Prosecutors read from lengthy evidentiary documents included in their 188-volume indictment, at times appearing to have little comprehension of what they were reading. Khodorkovskiy's defense continues to maintain that the charges against their client are absurd and trumped-up for political reasons. International pressure on the GOR is mounting as overseas Yukos investors seek damages related to the breakup of the company. Despite the recent release of former Yukos associates Svetlana Bakhmina and Vasiliy Aleksanyan, one of Khodorkovskiy's lawyers expressed pessimism regarding his chances of acquittal. Post will continue to monitor the trial in coordination with EU colleagues. End summary.

Spectators at the trial keep their spirits up

¶2. (SBU) On April 28, we attended the Khodorkovskiy/Lebedev trial in Moscow's Khamovnikchesky Court, which began on March ¶31. Although on previous visits we had been restricted to a viewing room where journalists watched the proceedings on closed-circuit television (which was sometimes blocked), on this occasion we asked to enter the courtroom, and one of the officers of the court replied, "Yes, of course, go ahead; everything is open." Along with a group of approximately 30 spectators, all supporters of the prisoners, we were ushered into a stairwell while awaiting the prisoners' arrival. When Khodorkovskiy and fellow prisoner Platon Lebedev arrived, members of the group began shouting, "You are great men!", "We will see you soon!", and other words of support. One older woman exhorted her comrades to "be more active." A man in a T-shirt reading, "Khodorkovskiy Go Home," told us, "We do not belong to any special organization; we are simply citizens who have come to observe the process." Police officers present reacted to this display with equanimity, appearing more bored than annoyed. Their only admonition to the group was to make sure their cell phones were off before the proceedings began.

¶3. (SBU) Inside the small and stuffy courtroom, allies of the prisoners went to their glass cage to confer with them while waiting for the prosecution to arrive. (Note: The usual metal cage with bars had been replaced with a glass cage at the defense's request; despite the closeness of the room, the cage had ample ventilation. End note.) Khodorkovskiy busied himself writing out arguments and passing them to members of the defense team. Spectators called one of the officers over and bantered with him about his FSB badge.

"The prosecutors don't understand it either"

14. (SBU) In the segment of the trial that we observed, the prosecution had the floor. After a protracted explanation of the legal basis for denying the prisoners parole -- for which, according to the defense, they became eligible in 2008 -- the prosecution resumed its reading of documents from its 188-volume case file to be introduced as evidence in the embezzlement indictment. (Note: The prosecution alleges that Khodorkovskiy and Lebedev embezzled 350 million metric tons of oil worth over USD 25.4 billion and laundered over USD 21.4 billion (ref A) . End note.) A stupor settled over the courtroom as the prosecution's designated reader droned on, interrupted only once by a heated exchange between the two sides that occurred when the defense objected that one of the evidentiary items was based on hearsay. The judge overruled the objection.

15. (SBU) The prosecutors frequently hesitated and stumbled over their words, and had trouble reading from their own documents, as well as finding the items that they needed. They rarely looked up at either the judge, the defense, the prisoners, or the spectators, and often covered their faces or mouths with their hand as they spoke. As the prosecutor's reader delved into mind-numbing detail regarding a particular set of Yuganskneft shares that had followed a convoluted path through a series of Yukos's subsidiary companies, we asked a fellow spectator sitting next to us, "Are you following this?" He replied, "No, I am not; and neither is the person reading it."

"A joke from start to finish"

MOSCOW 00001123 002 OF 003

16. (C) Khodorkovskiy and his defense team have maintained throughout the trial that the charges against them are absurd to the point of incomprehensibility, and that this is simply a politically-motivated "show trial" designed to ensure that the prisoners remain incarcerated. In conversations on April 16 and April 27, Khodorkovskiy lawyer Maria Logan explained to us the heart of the defense's argument: that there could not have been any embezzlement when the same volumes of Yukos production were reported, accounted for and heavily taxed; and that there could not have been any "money laundering" when there was no underlying crime. As Logan noted, "The prosecution has not explained how it was possible that Yukos covered its operating expenses and invested heavily in capital improvements and acquisitions and paid dividends, when the funds necessary for these operations were allegedly stolen."

17. (C) Other commentators, such as Evgeny Kiselyev of Ekho Moskv, have pointed out that the volume of allegedly embezzled oil constitutes Yukos's entire production over the period in question, and that Khodorkovskiy appears to be on trial for the same offense for which he was previously convicted -- tax evasion, now being referred to as "embezzlement." On April 21, Khodorkovskiy pleaded not guilty to the charges, and stated, "The claim that 350,000 tons of oil have been stolen or hidden makes no sense; it's no bucket of paint stolen from a store." Irina Yasina, director of the Club of Regional Journalists who also previously worked for Khodorkovskiy's Open Russia institute, told us on April 29 that "there are no rules" in this case, and that "the whole thing is a joke from start to finish."

GOR runs into trouble overseas

18. (SBU) Already a subject of intense media attention, the Yukos case is rapidly spilling into international territory. On April 14, the Stockholm Court of Arbitration agreed to hear a complaint by several Spanish investment funds demanding compensation from Russia for losses caused by the

government's forced Yukos bankruptcy. According to Vladimir Khvalev, a lawyer with Baker & McKenzie, Russia is "90 percent likely" to lose the Stockholm Court case, and the only question is how much the damages will be. Although the suit only covers investors who held Yukos securities and who live in countries that have bilateral agreements with Russia protecting investments, estimates of the possible damages run as high as USD 10 billion. Even this large sum is dwarfed by another case, dating to 2005, in which former Yukos investors from several different countries seek USD billion in damages from Russia under Article 26 of the Energy Charter Treaty, which protects investors in the energy sector by prohibiting "biased and arbitrary legal proceedings." Since November 2008, a court in the Hague has been deciding whether the ECT has jurisdiction over Russia in the Yukos case; the GOR argues that it does not, because Russia signed the Treaty in 1994 but never ratified it, while the plaintiffs argue that Article 45 of the Treaty binds its signatories even while it is waiting to be ratified.

¶9. (SBU) The potential damage to the GOR in this instance goes beyond political symbolism; in the event of an arbitration ruling in a foreign court against the GOR, plaintiffs may be in a position to recover damages by selling GOR property located abroad. In recent years, the Hague has decided that the ECT has jurisdiction over other countries that signed the Treaty without ratifying it, establishing a precedent that does not look promising for the GOR. Logan told us that she expects a ruling on this point in the next one or two months.

¶10. (SBU) In addition to these other cases, a Yukos-related case is pending at the European Court of Human Rights in Strasbourg (ref B), in which the GOR theoretically stands to receive a USD 50 billion penalty. (Note: There are actually three cases: This one in which investors are demanding compensation, and two others which accuse the GOR of violating the defendants' right to a fair trial. End note.) Logan told us that the Court is unlikely to impose this penalty, and will more likely find "damages" for an unspecified amount, probably affordable for the GOR. However, the symbolism of losing additional cases at the ECHR further intensifies the pressure on the GOR in the case. On April 23, a decision in the Moscow Arbitration Court in favor of state-owned oil company Rosneft, allowing its subsidiary Samaraneftegaz to recoup a 50 percent stake in a former oil field of Yukos, ironically harmed the GOR in the ECHR case by undermining its claim that to the Court cannot review the liquidation of Yukos.

MOSCOW 00001123 003 OF 003

¶11. (SBU) The Yukos case continues to make headlines beyond Russia's borders, in a fashion which has become increasingly difficult for the GOR to control. For example, on April 27, as he was preparing to give a talk at the Institute of International Economics in Washington, U.S. lawyers representing Khodorkovskiy and Lebedev served Finance Minister Aleksey Kudrin with a supoen a to testify in a Washington district court in a lawsuit filed against the GOR by U.S.-based Yukos shareholders. Khodorkovskiy's lawyer took pains to note that "we are not accusing Kudrin of anything," but seek his testimony as a witness who has information about oil pricing and production in Russia. More ominously, on April 24, gazeta.ru reported that a witness for the defense, a former Yukos manager with Spanish and Russian citizenship named Antonio Valdez-Garcia who was staying abroad for his own safety, had his video testimony blocked at the trial. Valdez-Garcia alleges that he returned to Russia in 2005 in order to give evidence to the investigation of the Yukos case, but that when he failed to accuse Khodorkovskiy and Lebedev, investigators beat and threatened him.

Great that Bakhmina is free, but "the State never loses"

¶12. (C) The Khodorkovskiy case proceeds amid a backdrop of recent signals of a possible trend towards liberalization from Medvedev (ref C). In the context of this case, foremost among the promising signals were the recent parole decisions freeing former Yukos lawyer Svetlana Bakhmina, and former Yukos vice-president Vasilii Aleksanyan. The Aleksanyan decision received little fanfare, as the intense level of his illness (terminal cancer and HIV) meant that his "freedom" was relatively insignificant, given that he was already being treated in a private hospital. However, the April 21 decision by a Moscow court to free Bakhmina (she returned home on April 24), after a year-long public campaign for her release that garnered nearly 100,000 signatures, was widely hailed. Rumors that the prosecution intended to use her as a witness immediately began to fly around Moscow, but thus far there has been no evidence of any such intention, and Khodorkovskiy lawyer Vadim Klyuvgant expressed his doubt to us on this point on April 29.

¶13. (C) Notwithstanding these parole decisions, few expect the Khodorkovskiy case to showcase Medvedev's expressed intent to promote rule of law. Some of our contacts have suggested that the GOR may cut a deal with Khodorkovskiy's team, such as a reduced sentence or an acquittal, in exchange for Khodorkovskiy's public contrition and agreement not to dabble further in politics. Yasina told us that, although the decision "will be based on telephone justice rather than legal rules," she was "not sure" that the case would "end in a sentence." However, Logan expressed pessimism to us about the outcome of the case, saying that "the State never loses" a trial, and adding that in contrast to the first trial, there are no negotiations taking place between GOR representatives and Khodorkovskiy representatives.

Comment

¶14. (C) The pressure is mounting on the GOR, as international investors cry foul in courts much more sympathetic to their arguments than the Khamovnikchesky Court, and as unfavorable Yukos headlines appear in foreign and domestic newspapers. The case is also creating procedural headaches for the GOR; for example, Logan told us that legislation that would likely free hundreds of prisoners, by increasing the amount of time served that can be applied to parole, is currently held up in the State Duma, specifically because said legislation would apply to Khodorkovskiy.

¶15. (C) Some of the public bitterness directed at 1990s oligarchs such as Khodorkovskiy has dissipated with the passage of time, as evidenced by a recent Levada Center poll in which 40 percent of respondents believed Khodorkovskiy should be acquitted. Nonetheless, the GOR has little wiggle room in the case. Any move that would please liberals would enrage conservatives, and vice versa. Statements from some commentators comparing the case to the "show trials" of the Stalin era are facile; Khodorkovskiy's powerpoint defense is available on the internet, and it is easy for his supporters to attend and to express themselves, as even the firebrand activist Garry Kasparov did on April 29. Nonetheless, virtually nobody believes that the judge will make his decision free of GOR influence. As a result, the world is watching the case in order to learn about the GOR's political intentions, rather than the judge's legal intentions. We will continue to monitor the case closely in coordination with our EU colleagues and report on its developments.

BEYRLE